

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA
3
4 STATE OF OKLAHOMA, ex rel,)
5 W.A. DREW EDMONDSON, in his)
6 capacity as ATTORNEY GENERAL)
7 OF THE STATE OF OKLAHOMA,)
8 et al.)
9 Plaintiffs,)
10 V.)
11)
12)
13 TYSON FOODS, INC., et al.,)
14)
15 Defendants.)

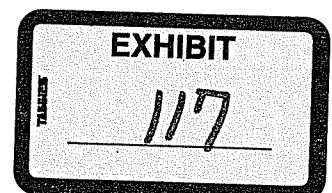
16 REPORTER'S TRANSCRIPT OF PROCEEDINGS
17 FEBRUARY 21, 2008
18 PRELIMINARY INJUNCTION HEARING
19 VOLUME III

20 BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

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LOWELL MARK CANEDAY

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15 PROCEEDINGS

16 February 21, 2008

17 THE COURT: Mr. Bullock, Mr. George, and Ms.
 18 Southerland and I spoke a second ago outside the courtroom with
 19 regard to evidentiary matters. We've been going at such a
 20 rapid pace and because there has been an agreement with regard
 21 to exhibits on direct, there have been promises made to the
 22 Court with respect to exhibits that have been used on cross
 23 that they would be handled at the next break or at lunch that
 24 has not been done. So the concern is that going forward, we
 25 need to handle this matter very quickly or it presents real

1 please.

2 THE WITNESS: Lowell Mark Caneday.

3 THE COURT: And that's C-A-N-E-D-A-Y?

4 THE WITNESS: That's correct.

5 THE COURT: You may inquire.

6 MR. LENNINGTON: Thank you.

7 DIRECT EXAMINATION

8 BY MR. LENNINGTON:

9 Q. Dr. Caneday, what is your current position?

10 A. I'm a professor of leisure studies at Oklahoma State
11 University.

12 Q. Do you hold any degrees?

13 A. Yes, I have a bachelor of arts in mathematics, a master of
14 arts in recreational park administration from the University of
15 Wyoming and a doctor of philosophy in recreation, park and
16 leisure studies from the University of Minnesota.

17 Q. Do you hold any certifications?

18 A. Yes, I'm a certified park and recreation professional
19 through the National Recreation & Park Association.

20 Q. Are you a member or fellow of any national organizations?

21 A. Yes, I'm a member of a number of professional
22 organizations. Probably the main one would be the National
23 Recreation & Park Association. And I have been named as a
24 fellow in the American Academy of Park & Recreation
25 Administrators and in the American Leisure Academy.

1 A. Yes, I do.

2 Q. And how do you know that?

3 A. I grew up on a farm. We had varying animals, including
4 White Plymouth Rock chickens. And I have cleaned many a
5 chicken house. I have distributed poultry litter on fields.
6 My father always said sweeten it and we did so by cutting it
7 with bovine residue.

8 Q. During the course of this case, there's been testimony
9 concerning the land application of poultry waste. During your
10 20 to 25 years of experience in the Illinois River Watershed,
11 have you actually ever seen poultry waste being applied to the
12 land?

13 A. Yes, I have.

14 Q. How often?

15 A. A number of times. In particular, I saw it this past
16 September. It was the Saturday after Labor Day. My wife and I
17 were in the river corridor and there was poultry litter that
18 had been applied.

19 Q. And during your time in the watershed, have you ever
20 experienced the runoff of poultry litter?

21 MR. MCDANIEL: Objection, Your Honor. He didn't
22 disclose any opinions related to environmental fate and
23 transport. I think this is going beyond being a fact witness.

24 MR. LENNINGTON: Your Honor, he is describing his
25 factual perceptions. He's not an expert in this area but he

1 has observed a runoff event and he would like to put that in
2 his own words as someone who is not a scientist but who can
3 definitely explain to you what he has observed firsthand as a
4 fact witness.

5 MR. MCDANIEL: Your Honor, it wasn't disclosed. We
6 took his deposition and this is a matter of science. A
7 non-technical person cannot just look and draw conclusions that
8 ought to be offered to this Court. I think it's improper
9 testimony. He's obviously here as a recreational expert, and
10 this is widely divergent from the reasons for which he was
11 offered.

12 THE COURT: How does this witness intend to identify
13 what he saw as chicken litter runoff?

14 MR. LENNINGTON: I can ask him that question and lay
15 the foundation for this factual experience. And he can
16 describe what he saw just with his own eyes and how he knew it
17 was chicken litter.

18 THE COURT: Go ahead.

19 A. My wife and I were driving on a Saturday afternoon in a
20 rain event in September on Chewy Road. We were heading west.
21 I was about to turn to the north going up to Paddle Trails
22 Camp. And it looked as though the field was literally moving
23 across the road in front of me as the float materials of the
24 litter floated on the rain --

25 MR. MCDANIEL: Objection, Your Honor. There's been no

1 foundation that what was moving was litter.

2 THE COURT: Correct, this is not laying a foundation,
3 Counsel.

4 Q. (By Mr. Lennington) Dr. Caneday, how did you know that
5 this was poultry litter, couldn't it have been something else?

6 A. There were probably two good indicators to me that it was
7 poultry litter. One, I actually did see on that occasion
8 feathers in the litter but the odor is unmistakable. It
9 brought back lots of memories. But I've smelled it on numerous
10 other occasions as well, that just happened to be one.

11 Q. Where was this substance moving towards?

12 A. We were heading west. It was coming from my right and
13 moving down the hillside toward the river on Chewy Road right
14 down the roadway.

15 Q. What direction is that?

16 A. That is going to the west in that area.

17 Q. Is that towards the Illinois River?

18 A. It's toward the Illinois River.

19 Q. How many miles were you from the river at this point?

20 A. I would say two miles because I was going to turn to the
21 north and that's a little bit closer to the river.

22 Q. Did you say this was the Saturday after Labor Day?

23 A. The Saturday after Labor Day. I believe it was September
24 9.

25 Q. Is the Labor Day time period a common time to float the